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NO. 879

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

EARLENE POLYAK — Appellant

vs

FRANK HULEN AND
WILMA LESANASKY — Appellees

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

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96 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

I

Whether order and sale of retirement home without any compensation violates the taking clauses of the Fifth and Fourteenth Amendments and Appellant is unconstitutionally deprived of property interest and suffers irreparable damages and right to never be regained in property.

II

Whether order and sale of property without jury trial to determine amount of compensation due Appellant for (10) year restoration and maintenance unconstitutionally deprives her of just compensation and in violation of Seventh Amendment.

III

Whether this Court should hear case to determine Appellant's right to retirement home and just compensation, or in the alternative order a New Trial.

IV

Whether the award of costs and attornye fees is and additional unfair and unjust burden to Appellant and should be set aside.

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PARTIES TO THE PROCEEDINGS

Appellant, Plaintiff below is Earlene Polyak, Appeal No. 85-5032/5101/5147, District Court No. 1: 84-0083, and Appellant Defendant, Appeal No. 84-6090, District Court No. 1:84-0082.

Appellee, Defendants below are Frank Hulen and Wilma Lesnansky Appeal No. 85-5032/5101/5147, District Court No. 1:85-0083, and Appellee Plaintiff, Appeal No. 84-6090, District Court No. 1: 84-0082.

Related cases are: Buford Evans & Sons v. Earlene Polyak Case No. 1:85-0120, Earlene Polyak v. Jim Hamilton and the Circuit Court of Lawrence County, Case No. 1:85-0116, Earlene Polyak v. Thomas Stack, Henry Henry & Stack, and Earlene Polyak v. William Boston, Boston, Bates & Holt.

OPINIONS BELOW

The opinion of the Chancery Court of Lawrence County, Tennessee, is set forth in Appendix A.The opinion of the Court of Appeals and the Supreme Court of Tennessee is set forth in Appendix B. The opinion of the United States District Court, Middle District, is set forth in Case No. 1:84-0082 in Appendix C. The opinion of the United States District Court in Case No. 1:84-0083, is set forth in Appendix D. And the opinion of the United States Court of Appeals in Case No. 85-5032/5101/5147, and 84-6090, is set forth in Appendix E. These cases were consolidated for appeal by motion of counsel for the Appellees over Appellant's objections.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit in Case Nos. 85-5032/5101/5147, District Court No. 1:84-0083, and 84-6090, District Court Case No.1:84-0082, were entered on December 17, 1985. The Petition to Rehear En Banc was denied on February 13, 1986. Petitioner was granted an extension of time on May 1986, through June 13, 1986. This time was extended to appeal and it is timely filed.

The jurisdiction of this Court is invoked pursuant to Article III, Sec. 2, which states that the judicial power shall extend to all cases of law and equity, between a State and citizens of another State; between citizens of different States.

Appellant believes that it is invoked under 42 USC Sec. 1982, 42 USC Sec. 1982, 42 USC Sec. 1983, 28 USCS 1443(1 & 2), Equal Access to Justice Act 1980, 60.02 FRCP, and the Fifth, Seventh and Fourteenth Amendments.

The federal civil and constitutional questions were timely raised as a defense by Appellant that the order to sell her retirement home without any compensation by a State officer and appeal was never heard unconstitutionally deprives of her property interest without due process and just compensation.

Appellant believes that the taking of her property without just compensation is in violation of the taking clauses of the Fifth and Fourteenth Amendments. The civil and constitutional questions were raised through out the proceedings leading to appeal.

The Notice of Appeal to this Court was timely received in the Court of Appeals on March 17, 1986.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

> No... person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V, cl 3& 4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of a jury trial shall be preserved...

U.S. Const. amen VII.

The pertinent portion of the Fourteenth Amendment is as follows:

> No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; Nor any State deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, 1.

42 U.S.C Sec. 1981:

> All persons within the jurisdiction of the United States shall have the same right in every state...equal benefit of all laws and proceedings for the security of persons and property....

42 U.S.C Sec. 1982

> "All citizens of the United States shall have the same right, in every State ... to inherit

purchase, lease, sell, hold and convey real and personal property.

PARTITION IN KIND IS FAVORED BY STATUTE

If exact partition can not be made without material injury to the parties or some one of them(the commissioners), may make partition as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares, and report the facts.(1932) T.C.A.

The Rules of Civil Procedure avail appeal as a right except Rule 3 and Rule 54.02, T.R.C.P.,

if multiple parties or multiple claims for relief are involved in an action, any order that adjudicates fewer than all of the claims or the rights and liabilities of fewer that all of the parties is not enforceable or or appeable...Appellant believes unconstitutional.

An amendment to Rule 5(a) of the Tennessee Rules of Appellate procedure effective August 15, 1984.

deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court. Appellant contends that this amendment allows the clerk or Judge to discriminate as to who is allowed appeal. Emphasis added and it is unconstitutional.

STATEMENT OF THE CASE

The order to sell Appellant's retirement home does not award her any compensation for ten(10) years of restoration and maintenance before the distribution of the proceeds of the sale to pay all of the expenses incident to the sale, including attorney fees, and stipulates that the "cost of sale

shall be deducted from defendant's share of the proceeds" was entered in the Chancery Court of Lawrence County, Tennessee, on October 19, 1983. This order to sell Appellant's retirement home and the denial of hearing on appeal unconstitutionly deprives her of her property interest without due process and just compensation and is in violation of the taking clauses of the Fifth and Fourteenth Amendments. Appellant is being deprived of her retirement home in a more temperate climate recommended by physicians for heart condition without jury trial and in violation of the Seventh Amendment. The taking of Appellant's retirement home after ten(10) years of possession and against the statute of Tennessee, is an irreparable damage and the loss of a right to never be regained.

This property was settled by agreement initiated by Appellees in 1976. It was even agreed as the partitions each individual would own , and Frank Hulen drew division lines at least three times, and each time the division was around the same individual agreed partition. Appellant believed that this settlement by agreement was made with good intent and she has abided by this agreemnet paid all expense

and has possession to this day. In 1982, Frank Hulen stated that he wanted the property sold so his kids could buy it, and he and Wilma Lesnansky conspired to take property by sale, including Appellant's investment in the restoration of her retirement home. They do not have any money invested in this home, and both are over sixty-two(62) years of age and live in big brick homes nearby. They retained William Boston, Boston, Bates & Holt, who has represented the family since 1976, and he divided his lolyalties and submitted a complaint to sell the property.The Court ordered sale of property is usually conducted by Public Auction and involves advertisement, real estate salesman, attorney fees, Court Costs, and related expenses.

Appellant believes that the naming of Mr. Eulan Hooper,Real Estate Auctioner, to sell the property in the Court Order, is against her Constitutional right of liberty to determine how her retirement home is sold and to name the price. Appellant has been present when Mr. Hooper goes on saleproperty with trucks and loud speakers and conducts Public Auction.She has learned that Mr. Hooper's license was suspended for six month and

he is presently on two years probation from the Tennessee Real Estate Commission.

Appellant believed that she was obligated to assume her case after she suspected that the second lawyer she retained was not representing her best interest. She went before the Honorable Jim Hamilton and raised the constitutional question that she had been subjected to an unjust and unfair hearing and that she was being deprived of her property without due process and just compensation. Mr. Thomas Stack, Attorney for the defense, ignored her allegation that her constitutional rights were being violated when she asked for a new trial within three days after the hearing on August 1, 1983. After assuming her case, Appellant found that Mr. Stack did not enter memorandum brief, evaluation and division of property into three parts of equal value, bills for restoration of the house into the record, or prepare a transcript of the proceedings, and placed Complaint No. 10612, Earlene Polyak v. Thomas Stack, Henry & Stack, in the Circuit of Lawrence County on July 27, 1984.

Appellant entered Complaint No. 10611, Earlene

Polyak v. William Boston, Boston, Bates & Holt, in the Circuit court of Lawrence County on July 27, 1983, but due to discrimination of local prejudice and influence in retaining representation, she entered nonsuits in both cases on August 31, 1986.

Appellant learned that prior to the above cases, Mr. Buford Evans, Real Estate Auctioner, who had been allegedly retained by Mr. Stack to survey her property without her permission or knowledge sued her in the Circuit Court of Lawrence County, Case No. 10647. Appellant learned that Mr. Evans did not have a license to survey property. When she compared his map to the order to sell No. 2, she became aware of the correlation. She has common knowledge of the property and knew that the level flat land has two large areas of, one tree and brushes, and another large area of saplings and underbrush, and the tree area appears exaggerated (see maps in App.). Appellant assumed that she would also pay for survey to sell property as it is the custom to sell first in parts, then as a whole at Public Auction.

The Court of Appeals dismissed Appellant's

appeal after allowing brief on technicality on April 26, 1984. This dismissal appeared to be the result of pro se Appellant appealing unappeable judgment to Motion for a New Trial and Amendment or Alteration of previous judgment for compensation for restoration of retirement home on December 19, 1983. Judge Hamilton instructed Appellant to appeal the judgment, stated the Court would prepare order dismissing Mr. Stack from defense, and instructed Mr. Boston to prepare judgment. Appellant appealed judgment sent to her by Boston Bates & Holt on December 30, 1983, and it was received by Chancery Court on January 3, and Court of Appeals on January 4, 1983. It appears that Thomas Stack prepared an order of his dismissal without Appellant's knowledge which was entered on January 10, 1984, signed by Mr. Stack, William Boston and Judge Hamilton(see App.) The Court of Appeals promises to review action of Trial Court after property is sold. Appellant was denied appeal on December 7, 1985, by Judge Hamilton refusing to forward record in Case No. 10647, and she believes Amendment of Rule 5(a) discriminates against appeal as a right in the State of Tennessee and is unconstitutional.

Case No. 83-405-II, Frank Hulen and Wilma Lesnansky vs Earlene Polyak was dismissed in the Court of Appeals TENN. without hearing. Appellant prepared main brief timely submitted on February 23, 1984, and the case was properly before the Court. The Suprme Court of Tennessee denied application for permission to appeal, application for permission to appeal denial and Motion for second application for permission to appeal on October 1, 1984.

A review of the briefs submitted to the above Courts reveals that Appellant begged for constitutional rights, oral argument, and that the Supreme Court use its supervisory power. Appellant submitted motion to rleave and revise order and judgment and allow appeal to be heard on Rule 60.02 TRAP,as judgment appealed by pro se Appellant, was prepared by adverse party after Judge Hamilton instructed her to get appeal to judgment in within ninety(90) days. Appellant suspects that all appeals dismissed in docket control as dates before holidays.

On October 1, 1984, Appellant filed petition to move Case No. 1974, from the Chancery Court of Lawrence County to the United States District Court. She based removal on diversity of citizenship and

grounded in her belief that she had been denied by State Court proceedings her right secured and guaranteed her by the laws providing equal civil and constitutional rights of citizens of the Unite States. Appellant called the Honorable Thomas A. Wiseman from near her home in Tennessee sometime in August 1984, and he stated that she could petition the Federal Court. William Boston's son Edward Boston assumed Case No. 1:84-0082, and it was quickly denied without oral argument or any kind of a hearing for failure to state a claim on which relief can be granted on October 26, 1984. Edward Boston's request for costs and attorney fees were denied.

Appellant submitted complaint No. 1:84-0083, Earlene Polyak vs. Frank Hulen and Wilma Lesnansky, under diversity of citizenship, on October 18, 1984 She asked to be awarded her rightful partition of the property as agreed in 1976, with Frank Hulen adding acreage to his farm, Wilma Lesnansky adding acreage to east of house, and Appellant getting hou and small acreage to compensate for their additiona acreage. Appellant stated that she did not desire sale and offered to buy their partition, or life

eatate, on October 18, 1984. This case was quickly dismissed at Edward Boston's motion, and he was awarded costs and attorney fees. Appellant's objection to the award of costs and attorney fees was held until she was obligated to appeal and resulted in three appeals at a cost of $280.00. Edward Boston's costs and fees were composed mainly of telephone calls to his father William Boston.The last appeal was entered on December 27, 1984, and Appellant's repeated requests for oral argument were disregarded, and this case was not heard.

On October 10, 1984, Appellant rode a bus all night to appeal Case 10647, Circuit Court of Lawrence County. Mr. Gerald Wilson refused to allow her to appeal until she went to the County Clerk and brought a copy deed of an additional forty(40) acres of property in Lawrence County to him. She asked for a jury trial and was told that trial would not be scheduled until March 1985. But Judge Hamilton scheduled trial December 26, 1984.

Appellant was ill and preparing to go to Florida early at physicians suggestion warm weather might improve heart and broncial problems. Judge Hamilton disregarded motion for contnuance based on extreme

burden her appearance in Court would place on her health, which was supported by physicians statements. Appellant did not expect to go to Court and did not make any preparations for an attorney. Her husband and son drove her from Florida, in the back seat of a car on pillows, and she relied on Oxygen to go to trial, and medications to defend her right to additional 40 acres, the Circuit Court Clerk was holding deed.

Appellant asked for judgment to be entered to appeal to this decision in which she believed Judge Hamilton influenced the decision maker, and that it be set aside. All motions were ignored. After application for permission to appeal to Court of Appeal and Supreme Court of Tennessee, Judge Hamilton entered judgment, but denied motion to forward records to Court of Appeals on December 7, 1985. Appellant believes Rule 5 (a) allows this descrimination against who appeals an unconstitutiona

Appellant submitted complaint against Jim T. Hamilton and the Circuit Court of Lawrence County, and it was filed on October 8, 1985, and dismissed within five days, on October 13, 1985, without oral argument or any kind of hearing. Complaint was filed in US District Ct

under diversity of citizenship and Case Nos.10647, 10611, and 10612 were added.to Case No. 1:85-0116. Appellant does not have any knowledge or expertise in law, but she believes that cases that would not ordinarily be heard can be joined under 1441(c).

The Honorable Thomas Wiseman quickly dismissed case, and enjoined Appellant from filing any further complaints in the United States District Court.

On May 2, 1986, Judge Wiseman issued an order closing all of these cases in the District Court, and Appellant appealed this order to the United States Court of appeals. She understands that this Court will not review cases in the Court of Appeals and feels that this was an intentional act of Judge Wiseman to prevent appeal.Judge Wiseman has disregarded all of Appellant's motions for hearing, and to file case against William boston. Judge stated that Appellant sued the members of his Court.

Appellant believes that the Court of Appeals has so far sanctioned the departure of theDistrict Court from accepted and usual course of judicial proceedings by distorting appeal, and disregarding all of pro se Appellant's motions to require action by this Court. She submitted Writ of Mandamus May 12.

REASONS WHY QUESTIONS REQUIRE PLENARY CONSIDERATION

I. The order to sell retirement home without jury trial to determine amount of due Appellant in compensation for irreparable damage loss of ten(10) year investment in restoration of house and loss of right to property to never be regained unconstitutiolly deprives her of property interest without just compensation.

The affirming decisions of the United States Court of Appeals of the decisions below relies upon matters of fact which Appellant has not been heard and that are open to reasonable dispute. The United States District Court quickly dismissed case without oral argument or any kind of hearing, Case No. 1:84-0082, Appeal No. 84-6090. The District Court has original jurisdiction through diversity of citizenship and amount of $60,000.00. The District Court was petitioned on grounds that Appellant has been denied by State Court proceedings her rights secured and guaranteed to her by the laws providing for civil and constitutional rights of citizens of the United States.

Appellant , who is not knowledgeable in law was (1) subjected by ineffective counsel to and unjust and unrair hearing;(2) Ms. Wilma Lesnansky did not testify and information withheld;(3)Appellant ill due

the effect of 102 degree heat on damaged heart; (4) her property was orded sold within two hours; (5) while the jury was out on another trial on July 29, 1983; (6) the order from this hearing did not award any compensation for 10 year investment, and stated that Appellant pay for cost of case after, cost of sale and attorney fees, from her share of the proceeds. An attempt to assert constituional right to new trial and just compensation resulted in an unappeable judgment, which Judge Hamilton had ordered pro se Appellant to appeal. The appeal in this case has resulted in judgment of Court of Appeals in another unappeable judgment. Appellant believes that this order that becomes final after the sale of Appellant's investment and loss of right is unconstitutional, and fraud upon Appellant and the Courts. She believes that this judgment should be vacated pursuant to Rule 60 FRCP, for misconduct of adverse party Boston Bates & Holt, and Appellant should be relieved of judgment including attorney fees and costs, and compensated for irreparable three (3) years of Court process on her health, in addition to value of sixty thousand dollars.

Appellant appeals United States District Court Case No. 1: 84-003, and Appeal No. 85-5032/5101/5149

to this Court's jurisdiction. Complaint is grounded in Appellant's constitutional inherited right to her retirement home, settlement by agreement with go intent in 1976, which is valid and enforceable in Tennessee, and amount including improved value is over $10,000.00.

Appellant agreed to settlement by agreement initiated by Appellee in 1976, and has improved and invested in her property.This agreement is supported by Tennessee statute and case law.

> 29-27-117. If... exact partition can not be mad ... they may make the partitions as nearly equal and charge the larger shares with the sums necessary to equalize shares.TCA 1932. Appellant has already offered to buy property if Appellees still want to sell. Emphasis added
>
> And,
> The Court may...in accordance with the wishes of one or more of the cotenants, order an allotment of share... in kind and severalty, and direct sale of other portion if it is not susceptable to partition in kind.Vandenburg v. Molder,4 Tenn. Civ. App. (Higgins) 111(1913)
> Appellant only asks for her agreed partition with retirement home. Emphasis added.

Appellant maintains and pays all expenses and has possession of retirement to this date."... the promise with the knowledge of the promiser takes possession of land and makes improvements. Courts in almost all States in such circumstances have

granted specific performance. Hagerty v. Hagerty, 172 259(1919). "Perhaps more frequently Courts have said taking possession and making good improvements constitutie "good consideration in equity." Lindell v. Lindell,135 Min. 368 371(1919). And,Parole partition of land followed by possession is binding and enforceable." Martin v. Taylor, 521. S.W. 2d 582 (Tenn. 1975).

The Court of Appealshas so far sanctioned the accepted and usual course of judical proceedings to call for this Court's power of supervision in determining the District Court's jurisdiction.

> The jurisdiction of the district court arising from diverse citizenship extends to the entire suit, and to every question state or federal in its determination. Wichita Light Co. v Public Utilities Co., Kans, 1922 43, Sp Ct. 51 260 U.S 67 L ed. 124.

> The Supreme Court has...recognized due process requirements are implicated whenever an enforcement power of a government is employed to deprive an individual of an interest deprived from common law in peaceful possession, Lindsey v. Norbert, 405US 56(1972)of real or personal property... whether the property is taken to meet a need ... or ... benefit of an individual. And,
> In all cases,...due process placed upon the government the duty to give notice and the opportunity to be heard,Brinkeroff etc., v. Hill to individuals whose life, liberty or property were adversley affected by government action. The assurance of a fair hearing before a"neutral

magristrate" who has no direct, personal, substantial interest in reaching a conslusion against him in his case. Tuny v. Ohio, 273 US 510 523(1927).

Appellant contends that she was subjected to unfair and unjust hearing and that all attempts to appeal the dicision in 84-6090, have not been heard. She was not allowed to submit exhibits in this case on appeal to the Court of Appeals by the Case supervisor and this information was supressed. Appellant contends that Case No 85-5032/5101/5147, was submitted to the District Court under diversity of citizenship, with required value in property over $60,000.00, and is properly before the Federal Court. She further contends that she has been denied due process and just compensation in the taking of her property and that her case meets the violation of due process recognized by the Supreme Court for consideration with briefs on the merits and oral argument for their resolution as in Lindsey v. Norbit,

II. The sale of retirement home without just compensation violates the taking clauses in the Fifth and Fourteenth Amendments.

The Supreme Court has recognized that due process requirements are implicated whenever the enforcement power of a government is employed to

deprive an individual of an interest deprived from common law in peaceful possession of property to meet the benefit of another individual. The Appellees have not met the burden of proof for the sale of property that was settled by agreement with division into individual partitions in 1976,against the preponderance of proof supported by Statute and case law in Tennessee. And the only justification for sale at Public Auction is for the benefit of expences of sale including lawyers fees, advertisement and Auctioneers costs, and Appellee's kids.

To be sure, the Court's cases have repeatedly stated that "one person's property may not be taken for benefit of another private person without justifying public purpose, eventhough compensation be paid" Thompson v. Consolidated Corp, 300 US 55, 57 S. Ct, 364 376 81 L Ed.
And,
Taking by state of private property of one person or corporation without owner's consent for private use of another, is not due process of law and is violation of Fourteenth Amendment of Constitution of the United States. Miss. P.R. v. Nebraska (1869) 164 US 403, 17 S.Ct.
And,
Fourteenth Amendment's protection of"property does not safeguard only rights of undisputed ownership, but also extends protection to any significant property interest, including statuory entitlements. Feuntes v Shevin, (1972) 407 US, 92 S.Ct. 1983. 32 L Ed 2d 566
And,
Soverign power of eminent domain to take property is inherient in sovereignty; but

> by this amendmdnent it may be exercised for public use only upon just compensation, it may not be exercised for private use at all. Wearly v F.T.C.D.C.N.J. 1978 , 449 US 822 S. Ct. 81 449.

The taking of Appellant's property for private use and sale at Public Auction is inviolation of the Fifth and Fourteenth Amendments and requires plenary consideration with briefs, and oral argument for their resolution.

> III. The taking of Appellant's retirement home without jury trial is in violation of the Seventh Amendment and she suffers irreparable damage and the loss of a right to never be regained.

Appellant has restored retirement home and maintained it in peaceful possession for ten(10) years, and it is being sold without any compensation. The order to sell states that after all expenses of sale, and attorney fees the cost of this case shall be deducted from Appellant's share of the proceeds and in violation of due process.

> Right of owner to fix price at which his property shall be sold or used is inherent attribute of propertyitsself, and as such is within protection of due process clause of Federal Constitution. Tyson & Brother-United Theatre Ticket Office Inc. v. Banton, (1927) 273 US S.CT. 426 (47) L Ed 718

Appellant suffers irreparable damage and a loss of a right to never be regained to her

retirement home.

> Property interest subject to procedural due process protection are not limited by few rigid technical forms,rather, "property" denotes broad range of interests that are secured by existing rules and understandings. Perry v. Sindermann(1972) 408 US593 92 S Ct. 2694 33 L Ed 2d 570

Appellant contends that irreparable damage and loss of a right to mever be regaind to her retirement home requires plenary consideration, with briefs and oral argument, for resolution.

> IV. Appellant is entitled to relief from attorney recklessly created needless costs.

Appellant requests that this Honorable Court review decision awarding local attorney Edward Boston attorney fees and costs. These services are composed mainly of long distance calls to his father William Boston, who retained him for this case. Edward Boston did not serve Appellant with a copy of the costs and fees, which were included in the order from the Court of Appeals.

> When attorney recklessly creates needless costs, other side is entitled to relief. 28 U.S.C.A. 1927FRCP.

William Boston served as attorney for the family since 1976, and divded his lolyalties, then retained his son Edward Boston to represent Appellees,

and both are dividing lolyalties in appealing against Appellant. William Boston admits writing unfavorable letters against Appellant and sending them to lawyers inquiring about her case. In addition to entering attorney and fees and costs against Appellant without serving her, Edward Boston has written the Honorable Thomas Wiseman an unfavorable letter about Appellant. Appellant asks that she be granted relief by vaeating judgment and voiding recklessly created needless costs. She contends that this relief should be included in plenary consideration.

V. The unconstitutional deprivation of the property owner of property interests and in violation of the taking clauses of the Fifth and Fourteenth Amendments is of impeartive public importance to require briefs on merits and oral argument for resolution.

Appellant has been disabled for several years as a result of heart condition and resulting complications. She has a need for the retirement home which she has invested 10 years in restoration and maintenance of home needed for health problems in a more temperaturate climate. She is only one of the many in the growing population of an older generation. The Supreme Court has already recognized

that due process is implicated whenever a power of government is employed to deprive an individual of property, members of the older generation increases rapidly, it becomes the Supreme Courts duty to keep up with the changes and provide more protection from those who would deprive them of their property and place them at the mercy of this very society that has deprived them of thier investments and savings.

Appellant desires the liberty to live on her property. She is aware that his property is located about thirty-two miles from the new General Motors "Saturn Plant". She was preparing her retirement home long before this inovation.The local newspaper The Democrat Union, describes this area as the "hot spot of the industrial area, and many are buying land to hold for investment. Appellant suggests that this Court examine the intent behind this sale with briefs on the merits and oral argument for the resolution of this ever growing problem. Appellant has heard the taking of property called land grabbing. She understands that all inhertied property of nonresidents is sold in the Chancery Court of Lawrence County.

CONCLUSION

Appellant prays that her case will be heard to give her a chance to retain her retirement home, but in the alternative, she request just compensati as set forth in the petition of $60,000.00 and as set forth in the complaint of $60,000.00*. She believes she has underestimated the irreparable damage the loss of her home is to her health, and the loss of a right to never be regained in her retirement home.

On the 12th day of June, 1986.

Respectfully submitted,

Earlene Polyak

Earlene Polyak
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Trenton, Michigan 48183
(313) 676-3364

CERTIFICATE OF SERVICE

I certify that a true and exact copy of this appeal has been mailed, First Class Postage prepaid to the United States Court of Appeals,524 Post Offi and Courthouse,Cincinnati, Ohio 45202,United States District Court,800 Courthouse, Nashville, Tennessee 35209, and Edward Boston, Attorney at Law, 2100 One Commerce Place, Nashville, Tennessee 37219, and all parties of interest in this pleading.

On the 12th June, 1986.

Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

I certify that the above information is true and correct to the best of my knowledge.

My commission expires April 14, 1990

Enid C. Harrison
Notary Public

*and; Relief from attorney fees + Costs, survey cost and other appropriate relief at entry of Courts final order, and as Complaints

APPENDIX A

In the Chancery Court of Lawrence County, Lawrenceburg, Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v. Earlene Polyak, Defendant. Frank Hulen is 74 years Earlene Polyak 64, and Wilma Lesnansky 62, years of age.

Complaint and restraining order against finishing seven year restoration of forty-five(45) year old for retirement home to move to Tennessee was served on Appellant on April 19, 1983.

Complaint was served on Appellant on property near Lawrenceburg, while she is a resident of Michigan, which renders complaint invalid by Tennessee law. Chancery Court Case No. 1974.

Hearing held in Columbia, and in Maury County, when complaint entered in Lawrence County, and against Tennessee law that hearing be held in county complaint entered on July 29, 1983.

Presiding: The Honorable Jim Hamilton. Judge Hamilton held hearing while jury was out on another trial, and issued verbal order to sell within two hours when attorney for the defense started to give summary. Judge Hamilton allowed memorandum brief.

STATEMENT OF THE CASE

Within one week after Mrs. Rena Hulen's death Plaintiff's initiated settlement by agreement of forty (40) acres with Frank Hulen addi back strip of acreage to his farm, Wilma Lesnansky getting acreage to the east of the house, as her son wanted to build home, and Appellant was to get forty-six (46) year old house with roof falling in,and acreage in front of house, about six (6) to ten (10) acres. As a result of this agreement in January, 1976, Appellant and her husband Alex P yak traveled to the farm at least twice each year to prepare old house for a retirement home. This restoration was especially difficult for Mr. Polyak as he is a World War II veteran with an artificial limb. The restoration included, but not excluded to, new roof costing over $1200.00, painting wood and restoring cement blocks,electric repairs,telephone instillation, termite control insurance, and repairs too numerous to mention.A trailer was pulled from Michigan to haul away large underbrush and rubbish.Plaintiff's were present, but did not help, or invest any money.

In 1982, Frank Hulen stated that he wanted the property sold so his kids could buy it, and he, and Wilma Lesnansky conspired to sell property without offering any compensation for Appellant's investment. They retained William Boston, Boston, Bates & Holt, who had represented the family since 1976, and this law firm divided lolyalties and sued for sale. Property is usually sold at Public Auction in Court ordered sales.

Appellant does not have any knowledge of law or expertise in the legal profession, but she relieved the first attorney,Mr. Lee England after he asked whether she wanted a private of public sale. Mr. England had promised to defend Appellant's investment and the settlement by agreement in 1976.

Mr. Thomas Stack, Henry Henry & Stack was retained after he promised to defend settlement by agreement and investment in retirement home. He cashed $1500.00 check enclosed with letter stating, "it is understood that if we are not successful in Lawrenceburg we will appeal to a higher Court. Mr. Stack promised that his work would merit appeal. He stated he needed $1500.00 to go against friends.

SUMMARY

Appellant suffers from open-- heart surgery and rsulting complications which results sensitivity to temperatures, and she became ill during July 1983,during a nationwide warning for heart patients to stay out of the heat wave.She asked Mr. Stack for hearing to be rescheduled due to 102 degree heat wave in Tennessee, but he stated that Mr. William Boston absolutely refused. Appellant was obligated to travel in heat wave to try to defend her right to her property. After exposure to this intense heat her condition became more severe and she required Oxygen, but Mr. Stack again refused to reschedule hearing on July 29, 1983. She objected twice sister not at tria

After Judge Hamilton ordered the property sold, Mr. Stack asked to submit a memorandum brief and it was allowed. Mr. Stack retained the services of Mr. Buford Evans, Real Estate Auctioneer to survey Appellant's p perty without her permission or knowledge, and she believes that the map is an an invalid representation of her property. The Memorandum Brief is as follows:

IN THE CHANCERY COURT
FOR
LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

VS

No. 1974

EARLENE POLYAK
Defendant

MEMORANDUM BRIEF

On July, 29, 1983, a hearing was held in the above styled cause before the Honorable Jim T. Hamilton, by consent of all parties and their counsel, at Columbia, Tennessee.

The issue: in the case raised by the parties pleadings were:

(1) Whether the subject property can be partitioned in kind or, alternatively, whether it is manifestly to the advantage of the parties that it be sold for a partition or so situated that it is not feasable or practical to divide in kind.

(2) Whether there has been a parole partition of this property in kind in reliance upon which Defendant has made substantial improvements on the house situated on the subject property.

This action is governed partly by the provision of Statute at TCA 29-27-201, et seq. It is also governed by a substantial body of case law, pertinent portions of which which will be cited herinafter.

PARTITION IN KIND IS FAVORED OVER SALE FOR PARTITION

The party insisting on a sale must show clearly by the facts the necissity for such sale, and nothing short of the clearest and most satisfactory proof could justify the Court in ordering a slae against the protest of one(1) of the tenants in common. Reeves v.Reeves , 58. Tenn 669, Vanderburg v. Molder, 4 Tenn. Civ. App.(4Higgins)III

Partition in kind at the common law was a matter of absolute right. Sale may not be ordered without good cause being shown. The applicant for sale must show the existance of such a state of facts as, under the statute, will be sufficient to rebut the presumption of law that each of the parties is entitled to an actual partition. The onus is always on he who seeks a sale.

Bevins vs. George, 255 S.W. 2d 409

BURDEN OF PROOF

The burden of proof where a party petitions for sale for partition clerily rests heavily on that party.

The mere opinion of a witness without facts sustaining it that the property can not be partitioned and must be sold is insufficient. A sale for partition based thereon will be held "utterly void."

Davidson vs. Bowden, 37 Tenn. 129
Ross vs. Ramsey, 40 Tenn. 15

Again, nothing short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one(1) of the tenants in common.

Reeves vs. Reeves, 58 Tenn. 669
Vandenburg vs. Molder supra:
Glen vs. Gresham, 602 S.W. 2d 256

PARTITION IN KIND IS A SEPARATION BETWEEN OWNERS

It is not a conveyance and, therefore, not governed by the statute of frauds. An agreement for partition between co-tenants may be proves by parole evidence.

Fisher vs. Loague, 3 Tenn. Cas. (Shannon) 123
Meachum vs. Meachum, 19 S.W. 757 91 Tenn. 532
McBroom vs. Whitefield, 108 Tenn. 422
McCaulty vs Peoples, 4 Tenn. App. 448

Where on tenant in common, at his own expense puts improvements on the common property, and afterwards partition in kind is made, such improvements should be alloted to the share of the party making them, and without any charge for their value.

Polk vs. Gunther, 107 Tenn. 16
Broyles vs. Waddell, 58 Tenn 32

The cost of the improvements made can be allowed to such a co-tenant; that co-tenant is not merely limited to the amount by which those improvements have increased the value of the property.

Wilburn vs. Kingsly, 3 Tenn. App. 88

If exact partition can not be made without material injury to the parties, or some one of them (the Commissioners), may make partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares, and report the facts.

T.C.A. 29-27-549
Hardin vs. Cogwell, 52 Tenn 549
Burdett vs. Norwood, Tenn. 491

COURT HAS GENERAL AND EQUITABLE POWERS

A Court of equity in a partition case does not act merely in a ministral capacity, but founds itself on general principles of equity according to its own notion of equal justice and equity between parties. It will, by its decree, adjust allequitable rights of the parties interested.

Sproles vs. Gray, 296 S.W. 2d 839

PROOF IN CASE

No summary will be made of the proof adducted at trial. The Court has its own notes and recollection of what was established by both sides at this hearing. Defendant will rley upon these facts and the application of the above-cited law thereto.

Respectfully submitted,

HENRY HENRY & STACK
By Thomas Stack(signed)
Thomas J Stack
Attorney for Defendant
Earline Polyak

The memorandum for the order was

William Boston on August 11, 1983,

order by Mr. Boston after 54 days is as follows:

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

Plaintiffs

VS CIVIL ACTION NO. 1974

EARLENE POLYAK

Defendant

ORDER

This cause came on to be heard this the 29th day of July, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, while holding Chancery Court in and for Lawrence County, Tennessee upon complaint heretofore filed in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in this cause, whereupon at the conclusion of which the defendant's attorneys were granted the privelege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in a memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there ar three distinctly different types of property included within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level and flat land which is suitable for raising crops.

3. The Court finds that there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of sa proceeds.

5. This sale shall be conducted by Eulan Hooper, unless the parties agree on another real estate

company.

all of which is, therefore, ORDERED AND DECREED by the Court.

This the 19 day of OCT. 1983.

(signed)
Jim T. Hamilton, Circuit Judge

APPROVED FOR ENTRY:
BOSTON BATES & HOLT
BY (signed William Boston)
ATTORNEYS FOR PLAINTIFF
BY (signed Thomas Stack)
ATTORNEY FOR DEFENDANT

It appears that the attorney who wins prepares the order, and this order was prepared by Boston Bates & Holt. According to this order, Appellant is not awarded any compensation for investment in herproperty, and the cost of this case is to be deducted from her share of the proceeds after payment of all expenses incident to the sale, including attorney fees. The taxpayer's copy of 1983, Property Tax Receipt No. 500-83-07353, Mrs. Rena Ann Hulen, Summertown, Tennessee 38483, shows 100% improved value of $8100.00, which is almost one half of the value of the land. Appellant is the only person to add improvements to this property and it is in the house. In fact, she her husband and children were working on the house the day the new appraisal was made.

Mr. Buford Evans prepared an evaluation with three partitions of equal value of this property:

Total land value.....$ 33,690.00
Total value of dwellings.....$ 6,330.00

The simplest and probably most equitable way to divide in kind was to divide the land and the buildings separate. The person who gets the tract with the buildings would pay the other two 1/3 of the value of the buildings.

TO RESTORE THE HOME would not be a major undertaking, remove all of the inside paper from the walls and and sheet rock over the wood ceiling or repaper. The floors would be sanded and finished into a very beatiful floor or place carpet over them. Repaint the wood inside and out.

Appellant found this evaluation with a el and Mr. Evans maps in the materials Mr. Stack returned after he was relieved of his services on December 19, 1983. She learned that he did not enter the memorandum brief, bills for the restoration of the house, and provide a transcript of the proceedings.

Appellant noticed a correlation between Mr. Evans map and the description of the findings in No.2 in the order supporting distinctly different types of property as the reason that it could not be divided. She had already mentioned some of these inaccurate discriptions to Mr. Stack, and noticed that the woods were exaggurated with black color. Appellant knows that the level flat land has two areas of bushes and presents map for comparison.

KENA MUIR

over $7.00 | under $7.00 | under $7.00

13.26 AC
$11,249.00

15.57 AC
$11,223.00

12.47 AC
$11,223.00

BEAN Field

DWELLING

BARN

20

BEAN Field

BEAN Field

BEAN Field

TRACT
(1)

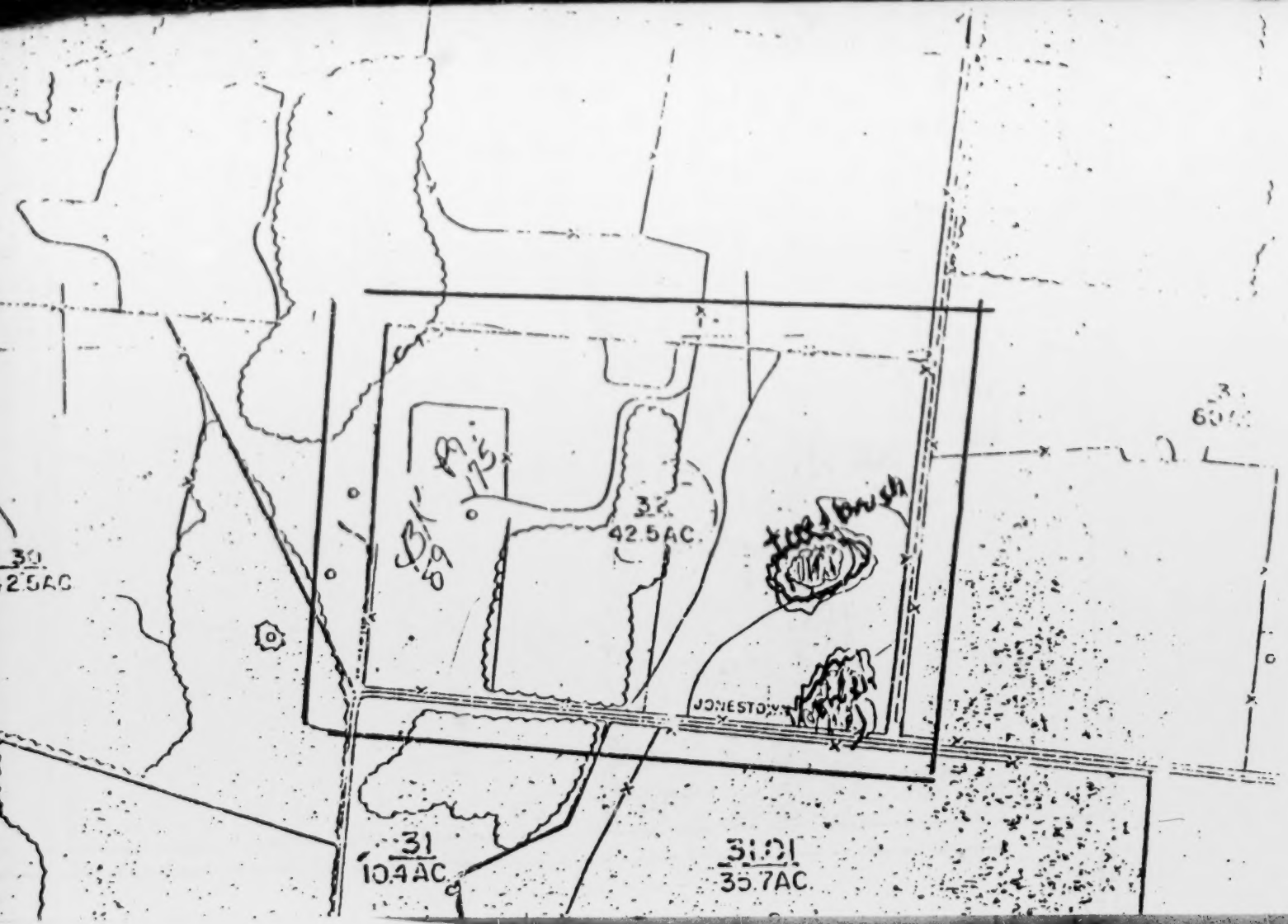
TRACT
(2)

TRACT
(3)

495'

589'

464'


30
25AC
32
42.5AC.
Bk 69 Pg 175
Tree Brush
JONESTOWN
31
10.4AC.
31.01
35.7AC.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

Plaintiffs

VS NO. 1974

EARLENE POLYAK

Defendant

MOTION FOR NEW TRIAL
OR FOR ALTERATION AND
AMENDMENT OF JUDGMENT

Now comes Defendant, Earlene Polyak, pursuant Rule 59, T.R.C.P., and respectfully moves that this Honorable Court grant a new trial of these proceedings or in the alternative that the order previously entered herein be modified in certain respects as set out below:

1. The motion for new trial is predicated on (a) the failure of plaintiff to meet their burden of proof by showing with clear and satisfactory proof that the subject premises are not susceptible of division or partition in kind:(b) the fact that a preponderence of the proof particularly the testimony of Buford Evans, suggested that the premises can be partitioned in kind and the Court's ruling is contrary to said weight of evidence.

2. The alternative motion for alteration and amendment of the order previously entered is predicated on the failure of the Court to award to Defendant from the proceeds of the partition sale ordered the sum of 1,600.00 that being the amount spent by Defendant onrefurnishing the house as shown by her uncontroverted testimony at trial.

HENRY HENRY & STACK
BY signed by
Thomas Stack

Appellant had suspected from some time that Mr. Stack was not representing her best interest, and objected as she has many more bills and th

amount of money he asked for in the motion for alteration and amendment of judgment would hardly cover the new roof. He stated that he did not believe that Judge Hamilton would award Appellant any money. She learned on November 7, that order to sell property had been entered on October 19, 1983, and only a few days left to appeal. Appellant suspected that the map would be used to sell the property as it is the custom to divide property then sell for the higher price at Public Auction. When Mr. Stack ignored additional bills for the second time, she relieved him of his services and assumed her case on December 19, 1983.

Appellant believes that she first raised the constitutional question that she was being deprived of her property interest without due process and just compensation when she confronted Mr. Stack within three days after the hearing with an unfair and unjust hearing and demanded a New Trial.

Appellant confronted Judge Hamilton with an unjust and unfair hearing and asked for a new trial based on (1)she was taken across county lines for hearing in Maury County, when complaint entered in Lawrence County and against Tennessee law;(2)

Plaintiff Wilma Lesnansky did not come to hearing or testify and valuable evidence about the settlement by agreement;was withheld in her testimony;(3) Alex Polyak did not testify.He was present when division lines were being drawn;(4) Appellant was obligated to attend hearing while desperately ill due to heat wave, which a nationwide warning to heart patients was in effect;(5) Appellant's case was not given adequate time and consideration due to being held while the jury was out on another trial.

Appellant predicated her argument for amendment or alteration of previous judgment on the Court's failure to award her any monies for the restoration and maintenance of the property for seven(7) years out of the proceeds before any distribution of the money from the sale of the property.Judge Hamilton verbally denied motions and instructed William Boston to propare the judgment and instructed Appellant to get her appeal in within ninety(90) days. Judge Hamilton stated that the Court would prpeare a release from the defense of Appellant, but she found and order prepared without her knowledge in his return materials. This hearing resulted in judgment and order:

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon motion this day filed by defendant, personally in her own behalf, Statement and argument of the Defendant, Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston, Bates & Holt and Judge Hamilton and entered December 20, 1983.

ORDER

This cause came to be heard on this the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, on the Motion for a New Trial or for Alteration or Amendment of judgment of the order previously filed herein by the Defendant, Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of said Earlene Polyak to be be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned Motion not be heard in this Court IT IS THEREFORE ORDERED are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc, be and hereby dismissed. This order was signed by Thomas Stack, William Boston and Judge Hamilton and entered January 10, 1984.

The Notice of Appeal was mailed to the Chancery Court of Lawrence County on December 30, 1983, and a copy was mailed the the Court of Appeals in Nashville, Tennessee.

On july 26, 1984, Mr. Evans filed a complaint against Appellant in the Circuit Court of Lawrence County, Case No. 10647, Buford Evans v. Earlene Polyak.

On July 27, 1984, Appellant filed a Complaint in the Circuit Court of Lawrence County No. 10611, Earlene Polyak v. William Boston, Boston, Boston, Bates & Holt, and Complaint No. 10612, Earlene Polyak v. Thomas Stack, Henry Henry & Stack.

On August 31, 1984, Notice of Nonsuit was filed as follows:

CIRCUIT COURT OF LAWRENCE COUNTY,TENNESSEE

EARLENE POLYAK
Plaintiff

vs. Civil Action 10611

WILLIAM BOSTON
BOSTON, BATES & HOLT

NOTICE OF NONSUIT

Plaintiff, Earlene Polyak, pursuant to Rule 41.01, TennesseeRules of Appellate Procedure,hereby gives notice to enter nonsuit without prejudice in Civil Action No. 10611, filed against William Boston, Boston, Bates & Holt on July 27, 1984, to Plaintiff refiling cause of action.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

Date:August 31, 1984

On December 26, 1984, Appellant found what appears to be the dismissal to her objection to the sale of her property in Chancery Court Case No. 1974. Judge Hamilton disregarded all of Appellant's motions petitions and requests made to the Court. She was

ble to reach to reach him on the telephone on
ctober 31, 1984, and he stated that he signed an
rder dismissing all of her cases in Lawrence
ounty and that her property would soon be adverised
or sale. The order under the nonsuit follows:

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

ARLENE POLYAK
Plaintiff

s No. 10611

ILLIAM E. BOSTON, and
OSTON, BATES and HOLT

O R D E R

This cause came on to be heard and was heard
n the 9th day of October, 1984, before the Honorable
im T. Hamilton, Circuit Judge on the Motion of the
laintiff for this court to enjoin the sale of certain
eal estate, which was recently ordered sold from a
artition suit which was heard in Chancery Court for
awrence County, Tennessee.

The Chancery Court heard proof, ordered the real
atate sold for partition. The plaintiff appealed
his decision to the Court of Civil Appeals, where
he decision of Chancery was upheld. The plaintiff
hen petitioned the Supreme Court of Tennessee for
ertiorari, and this was denied.

It is therefore Ordered, by this Court that the
otion of the Plaintiff for this court to enjoin the
aleof this real estate for partition be dismissed.
t is further Ordered that the cost of this case be
djudicated against the defendant for which execution
ay issue if necessary.

This 9th day of October, 1984.

signed Jim T. Hamilton
Circuit Judge

PPROVED FOR ENTRY
(Plaintiff did not sign)
ARLENE POLYAK, PLAINTIFF

~~ILLIAM BOSTON DEFENDANT~~

CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS CIVIL ACTION NO. 10612

THOMAS STACK
HENRY, HENRY & STACK

NOTICE OF NONSUIT

Plaintiff, Earlene Polyak, pursuant to Rule 41.01, Tennessee Reuls of Civil Procedure, hereby gives notice of nonsuit without prejudice, in Civil Action No. 10612, filed against Thomas Stack Henry & Stack on July 27, 1984, to Plaintiff refiling of cause of action.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

Date: August 31, 1984

An identical order to Case No. 10611 was found under this case number as follows:

IN THE CIRCUIT COURT FOR LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

vs No. 10612

THOMAS STACK, and
HENRY HENRY & STACK

O R D E R

This cause came on to be heard and was heard on the 9th day of October, 1984, before the Honorable Jim T. Hamilton, Circuit Judge on the Motion of the Plaintiff for this Court to enjoin the sale of certain real estate, which was recently ordered sold from a partition suit which was heard in the Chancery Court for Lawrence County, Tennessee.

The Chancery Court heard proof, and Ordered the real estate sold for partition. The Plaintiff appealed this decision to the Court of Civil Appeals, where

the decision of the Chancery Court was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for certorari, and this was denied.

It is therefore Ordered, by this Court that the motion of the Plaintiff to enjoin the sale of this real estate for partition be dismissed. It is further ordered tha the cost of thei case be adjudicated against the defendant for which execution may issue if necessary.

signed Jim T. Hamilton
CIRCUIT JUDGE

APPROVED FOR ENTRY:
(Plaintiff did not sign)
EARLENE POLYAK, PLAINTIFF

THOMAS STACK, DEFENDANT
HENRY HENRY and STACK

Appellant was not in this Court until October 10, 1984, to appeal Case No. 10647. The Circuit Court Clerk refused to allow her to appeal until she went to the County Court Clerk and brought the copy of the deed to an additional forty (40) acres of land.

Appellant submitted applications for permission to appeal to the Court of Appeals in Tennessee, which were denied, but the cases were put back on the docket. It appears thatthese hearings were held in her absence.

Judge Hamilton disregarded Appellant's Request for a Restraining order against the sale of her property pending Court proceedings on September 20, 1984, but he denied another request on October 17, 1985, Case No. 10647, Bufrod Evans v. Earlene Polyak. She was not in the Court on this date.

APPENDIX B

In the Court of Appeals and Supreme Court of Tennessee, Middle Section at Nashville.

Frank Hulen and Wilma Lesnansky, Plaintiff-Appellee v. Earlene Polyak, Defendant-Appellant.

Civil Action No. 83-405-II

Filed: Main Brief on February 22, 1984

Dismissed: April 26, 1984

Presiding in the Court of Appeals: Judge Henry F. Todd P.J., Judge Samuel Lewis, Judge Ben Cantrell, and Judge Lewis H. Conner, Jr.

This appeal is from the Chancery Court, Lawrence County, Tennessee, from the order to sell Appellant's retirement home without just compensation entered on October 19, 1983, and denial of a New Trial, and for Alteration or Amendment of Judgment to allow for just compensation for restoration of home entered on December 20, 1983.

Presiding:The Honorable Jim T. Hamilton at both hearings.

Notice of Appeal filed: January 3, 1984, in the Chancery Court, and copy filed filed on January 4, 1984, in the Court of Appeals.

Technical Record filed: January 20, 1984, and

SUMMARY

Appellant grounded this appeal in her belief that the order to sell her retirement home verbally issued on July 19, 1983,and followed by entering on October 19, 1983, unconstitutionally deprived of her property without due process and just compensation for restoration of house and seven(7) years maintenance. Petitioner stated that s e had been subjected to unjust and unfair hearing within three days and asked Mr. Stack for a New Trial. Appellant stated that she had been subjected to an unfair and unjust on December 19, 1983. Judge Hamilton instructed her to get her appeal in within ninety(90) days and instructed William to prepare the judgment. Notice of Appeal was received in the Chancery Court of Lawrence County on January 3, 1983.

The Trial Clerk filed the Technical Record within 19 days on January 20, 1983,as follows:

STATE OF TENNESSEE
COURT OF APPEALS

FRANK HULEN & WILMA LESNANSKY vs.
EARLINE POLYAK

Nashville,Jan.20, 1984

DOCKETED AS APPEAL NO: 83-405-II
RECORD FILED TODAY IN THE COURT OF APPEALS
EXPECTED ARGUMENT SESSION: APRIL 30-MAY 4, 1984
Ramsey Leathers, Clerk

After the Trial Clerk filed the technical record seventeen days after the notice of appeal case was suddenly dismissed, but Appellant was allowed to submit brief on technicalities after petition to rehear was allowed by the Court of Appeals.

It was decided that she should have appealed the order entered by Mr. Stack on January 10, 1984, without her knowledge, instead of the judgment entered by William Boston on December 20, 1983. This unappealable was entered after Judge Hamilton instructed Appellant to appeal it on December 19, 1983.

Appellant submitted timely brief on February 23, 1984, and Statement of Evidence on March 2, 1984, but appeal was never heard, and case was dismissed on April 26, 1984. The pertinent part of the decision is as follows:

> And it appearing from the record that appellant's motion to alter and amend was heard on December 19, 1983, that on January 3,1984 appellant filed a notice of appeal "from the from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter of amend was not entered unitl January 10, 1984.
> ... and it appearing that hte judgment from which appeal was sought is not a final judgment appealable as a right under TRAP Rule 3 in that said judgment orders the sale of property but does not confirm any sals or transfer

title.

IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial court by appeal prosecuted from final judgment.

On August 15, 1984, the TRAP amended Rule 5(a) deleting the requirement that a copy of the notice of appeal be filed with the clerk of the Court of Appeals. Appellant believes that this rule allows for discrimination as to who is allowed to appeal. Judge Hamilton denied Appellant's motion to forward records of Case No 10647, on December 7, 1985. She believes that pro se ligitant is not allowed appeal as a right.

Judge Hamilton disregarded all of Appellant's motions, petitions and requests in an attempt to correct the record, and defend herself in the Chancery and Circuit Court of Lawrence County.

Appellant believes that she had a valid argument as TRAP Rule 4(d) a notice of appeal filed before the entry of the judgment shall be treated as filed after such entry and on the day thereof, and (d) establishes the general principle that a right of appeal is not lost by filing the notice of appeal before judgment appealed.

SUPREME COURT

In the Supreme Court of Tennessee, Middle Division, this case same No. 83-405-II.

Application for permission to appeal submitted on May 17, 1984, and denied on July 2, 1984.

Petition to rehear denial of application for permission to appeal to the Supreme Court denied .

A motion to permit second petition to rehear was filed on September 4, 1984, and denied on October 1, 1984.

Presiding: William Foner, Chief Judge, Ray Brock, Robert Cooper, Frank Drevota, and William B. Harrison.

SUMMARY

IN the application for permission to appeal Appellant stated that she was being civil and constitutional rights and due process to defend her right to her property, and requested the suprevisory power of the Court. She submitted motion to relieve and revise judgment and order to allow appeal pursuant to TRCP 60.02 as judgment prepared by adverse party Boston Bates & Holt. And"Trial Judge decision not conclusive on appellate Court. Citizens National Bank etc. v Witherspoon, 127 Tenn 363 (1912).

APPENDIX C

In the United States District Court of the Middle District of Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v Earlene Polyak Defenent. Sase No. 1:84-0082.

Filed: October 1, 1984.

Presiding: Thomas Wiseman Jr, Chief Judge.

Appeled to the United States Court of Appeals for the Sixth circuit on November 6, 1984.

SUMMARY

The District court dismissed the petition for failure to state a claim on which relief can be granted. Appellant's request for oral argument and jury trial denied. Attorney costs and fees denied.

It was Appellant's understanding that Court be petitioned after telephone conservation with Judge Wiseman about problems with attorneys.

Appellant grounded her petition on the basis that she was being denied by State Courts rights secured for civil and Constitutional laws by the constitution.

Appellant noticed that all applications denied around holidays PER CURIUM, It appears docket control.

APPENDIX D

In the United States District Court, Middle District of Tennessee.

Earlene Polyak Plaintiff v. Frank Hulen and Wilma Lesnansky, Defendants.

Case No. 1:83-0083

Filed: November 18, 1984.

Dismissed: December 3, 1984.

Petition to Rehear and Deny Attorney Costs and fees denied December 12, 1984, Case No 2.

Motion to Strike Defendant's motion to dismiss, denied, this matter has been appealed. this Court does not have jurisdiction." Case No. 3, on February 4, 1985. Deputy Clerk held motion to force appeal untill Appellant forced to appeal attorney costs and fees then put motion in on February 4, 1984. Appellant called Court many times.

Presiding: Thomas A. Wiseman Jr. Chief Judge.

Appealed to the United States court of Appeals.

SUMMARY

This complaint was submitted under diverstiy of citizenshaip. Appellant asked that she be awarded her inherited and settlement by agreement right to retirement home she had restored and

maintained since 1976.She described the division of 1976, in which Frank Hulen would add the back acreage to this farm, Wilma Lesnansky was to get the acreage to the east of the farm and Appellant was to get 46 year old house and acreage in front, to compensate for ther additional acreage. Land was valued at ¢1000.00 per acre at that time. It is not of much value now, and the restored house has increased in value due to cost of building.

Appellant did ask for restraining order as tobacco allotment had been taken from farm, antique furniture, and crop land was being ditched and damaged.Request for oral argument and jury trial ignore

This case was dismissed on Edward Boston's motion to dismiss within three weeks. Local attorney Edward Boston was awarded costs and fees. These services were composed mainly of long distance telephone calls to William Boston. Edward Boston wrote unfavorable letter to Judge Wiseman during Case No. 1:84-0082, which she believes prejudiced the Court. William Boston wrote unfavorable letter about Appellant, which he admitted that he sent to attorneys inquiring about her case. Appellant believes local prejudice and influence .

APPENDIX E

In the United States Court of Appeals for the Sixth Circuit.

Earlene Polyak PIaintiff-Appellant v Frank Hulen and Wilma Lesnansky, Defendant-Appellees.

Case Nos. 85-5032/5101/5147, D.C. No. 1:84-0083

Consolidated on appeal over Appellant's objections on motion by Edward Boston on March 1, 1985 with:

Frank Hulen and Wilma Lesnansky Plaintiff-Appellee v Earlene Polyak Defendant-Appellant Case No. 84-6090, D.C. No. 1:84-0082. Chancery Court Case No 1974, Court of Appeals and Supreme Court of Tennessee Case No. 83-405-II.

Filed: December 17, 1985, Extended appeal to February 13, 1986.

Rehear denied on February 13, 1986.

Appeal from the United States District Court, Middle District of Tennessee.

Presiding: Thomas A. Wiseman Jr.,

BEfore: KENNEDY AND KRUPANSKY, Circuit Judges and SUHRHEINRICH, District Judge.

SUMMARY

The Court of Appeals disregarded civil and constitutional rights and dismissed cases without allowing oral argument. Appellant's request for just compensation was identified as injunctive relief and denied. Edward Boston was awarded costs and attorney fees. He was later allowed to enter costs without serving Appellant. All attempts to call mandate to allow for objection to costs and attorney fees have been disregarded as all motions. It appears cases reviewed to award attorney fees and costs as these items are mentioned ten(10) times in decisions.

The District court and court of appeals has full jurisdiction in Case No 5032 filed under diverstiy of citizenship and amount exceeds $10,000.

Case No. 84-6090, was removed by petition on grounds that Appellant had been denied by State Court her rights as secured by the laws providing for civil and constitutional rights by the Fifth and Fourteenth Amendments, diverstiy of citizenship, and amount over $10,000. Although case removed Federal Courts have jurisdiction and has power to waive any requirements under 60.(b)FRCP,"for

intentional interference with inheritance". De Witt v. Duce, 1979 CAS Fla) 599 F 2d 676. And Federal Court has power to hear claims that would not be independently removable." Watkins v Grover (1974 CA 9(Cal 508 Fed 920. "... federal courts do have jurisdiction to entertain suits in favor of ... heirs.. to establish claims". Markham v. Allem, (1946) 326 US 490. And ... federal court may have personam and subject matter jurisdiction of rival claims and adjudicate between them. Rousseau v US Trust Co., 1976 DCNY) 422 Supp. 447. And.... federal court enters judgment... not whether case properly removed, but whether federal district Court had original jurisdiction had it been filed in that court. Grubbs v Gen. Electric Corp., 1978 405 US 699.

Appellant submitted notice of appeal and it was timely received by the Court of Appeals on March 17, 1986. The Supervisor returned appeal, but then allowed it to be returned to the Court. Appellant does not have any knowledge or expertise in law, and does not understand the rules of appeal, and she is at the mercy of the Supreme Court.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RECEIVED MARCH 17, 1986 John P. Herman Clerk

Earlene Polyak (Appeals)

Plaintiff/Appellant — Appeal No. 85/5032/5101/5147 District Court No. 1:84-0083

V. — (Consolidated by Court Order)

Defendant/Appellant

Frank Hulen and Wilma Lesnansky — Appeal No. 84.6090 District Court No. 1:84-0082 Court of Appeals of Tennessee & Supreme Court No. 83-405-II Lawrence County no. 1974

v. (And Related Opinions Below)

Plaintiff/Appellant

WILLIAM BOSTON
BOSTON BATES & HOLT — Appeal No. 85-6081 District Court No. 3-85X-103 Lawrence Law No. 10611 & neglect in filing New Complaint submitted to District Court on 2/28/86

v.

Plaintiff/Appellant

THOMAS STACK
HENRY HENRY & STACK — Appeal No. 85-5199 District Court No. 1:85-0125 Lawrence County Law No. 10612

v.

Defendant/Appellant

BUFORD EVANS & SONS

Appeal No. 85-6315
District Court No.
1:85-0120 Lawrence
County Law No. 10647

v.

Plaintiff/Appellant

JIM HAMILTON AND THE CIRCUIT COURT OF LAWRENCE COUNTY

Appeal No.85-6134
District Court No.
1: 85-0116

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Earlene Polyak, Plaintiff/Defendant/Appellant in the above styled cases, hereby appeals to the Supreme Court of the United States from the final order of this Court affirming the decision below in Cases No. 85/5032/5101/5147, and Case No.84-6090 on February 13, 1986, and related cases below. This appeal is pursuant to arrirming decisions of taking retirement home in Lawrence County Tennessee, in violation Taking Clause, Due Process Clause, and Equal Protection Clause in the Fifth and Fourteenth Amendments of the Constitution of the United States .*

Respectfully submitted,

Earlene Polyak
3179 Middlefield
Trenton, MI 48183
(313) 676-3364

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Notice of Appeal to the Supreme Court of the United States has been mailed First Class, postage prepaid, to Mr. Robert Boston, 2100 One Commerce Place Nashville, Tennessee 37239, and all part of interest in this pleacing.

On the 14th day of March, 1986.

Charles Agee

COPIES MAILED TO:

United States District Court
800 United States Courthouse Nashville,
Tennessee 37202

Mr. William Boston
Boston Bates & Holt
Lawrenceburg, Tennessee 38464

Mr. Ramsey Leathers, Clerk
100 Supreme Court Building
Nashville, Tennessee 37209

Mr. Thomas Stack
Henry Henry & Stack
Pulaski, Tennessee 38478

Mr. Buford Evans & Sons
Lawrenceburg, Tennessee 38464

Mr. Gerald Wilson, Clerk
Circuit Court of Lawrence County
Lawrenceburg, Tennessee 38464

Mrs. Frances Freemon C&M
Chancery Court of Lawrence County
Lawrenceburg, Tennessee 38464

The Honorable Jim Hamilton
P.O. Box 246
Mt. Pleasant, Tennessee 38474

*This Notice of Appeal confirms, consolidates and corrects previous appeal on pursuant to 28 USC 1257 (2).

No. 84-6090, 85-5032/5101/5147

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed Feb. 13, 1986 John P.Hehman, Clerk

Frank Hulen and Wilma Lesnansky,

Plaintiffs-Appellees (84-6090),
Defendants-Appellees (85-5032/5101/5147),

v.

EARLENE POLYAK,

Defendant- Appellant (84-6090),
Plaintiff-Appellant (85-5032/5101/5147)

ORDER

BEFORE: ENGEL and KRUPANSKY, Circuit Judges, and SUHRHEINRICH* United States District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original Submission and decision of the case. Accordingly, the petition is denied.

ENTIRED BY ORDER OF THE COURT

Signed John P. Hehman

EXTENSION OF TIME

An extension of time was granted through June 13,1986, and appeal is timely submitted to the Supreme Court of the United States.

No. 85-5101
No. 85-5147

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED DEC 17, 1986 John P. Hehman, Clerk

EARLENE BOLYAK,

Plaintiff-Appellant,

v.

FRANK HULEN AND
WILMA LESNANSKY,

Defendants-Appellees

ORDER

NOT RECOMMENDED
FOR FULL-TEXT
PUBLICATION

BEFORE: KENNEDY and KRUPANSKY, Circuit Judges; and SUHRHEIBNICH, District Judge*

In these two appeals, a Michigan pro se plaintiff attempts to appeal from a district court order setting an amount of costs and attorney fees awarded to the defendants under Rule 11, Federal Rules of Civil Procedure. The determination that plaintiff should be liable for the costs and attorney fees has already been reviewed by this Court in case no. 85-5032, and that determination is not again before us in these appeals. For the reasons which follow, the Court concludes that the amount of the costs and fees is proper and reasonable under the circumstances of this case.

Initially, it is apparent that this Court lacks jurisdiction over the appeal docketed under case no. 85-5101 because plaintiff's notice of appeal was filed during the pendency of her timely motion to dismiss the order setting the amount of costs and fees. Since the motion to dissmiss challenged the correctness of the order, it is construed as a timetolling motion to alter or amend authorized under Rule 59(e), Federal Rules of Civil Procedure. Miller v. Leavenworth-Jefferson Elec. Co-op., 653 F.2d 1378, 1380 (10th Cir. 1981); Dove v. Codesco, 569 F.2d 807, 809 (4th Cir. 1978); Theodoropoulos v. Thompson-Starrett Co., 418 F.2d 350, 353 (2d Cir. 1969). Since plaintiff's notice of appeal was Fire and Casualty Co., 685 F.2d 124, 127 (5th Cir. 1982) (per curiam); Wilkins v. Rogers, 581 F. 2d 399, 403 (4th Cir. 1978) (per curiam).

To the extent the appellant may have sought removal of her suit under 28 U.S.C. 1443 as one claiming civil rights violations, the dismissal by the district court was nonetheless proper for several reasons. Even as an attempted removal under 1443, the petition was properly denied as

untimely under 28 U.S.C. 1446(b) as the petition was filed well beyond thirty days after the appellant first received notice of the initial pleading in the state trial court. In addition, the petition was properly denied because the appellant clearly failed to meet the two-prong test for removal of a civil rights case under 1443. Johnson v. Mississippi, 421 U.S. 213, 222 (1975); Smith v. Winter, 717 F.2d 191, 194 (5th Cir. 1983). The appellant has not asserted any claim of racial inequality, and while she claims the state courts denied her various and sundry constitutional claims, the denial is not asserted to have been pursuant to an expressed state law, but rather largely due to ineffective assistance of counsel. In addition, the appellant could not have achieved removal under 1443(2) as neither of the defendants are state or federal officials, nor are they alleged to have assisted such persons in the performance of their officials, nor are they alleged to have assisted such persons in the performance of their official duties. Detroit Police Lts. and Sgts. Ass'n v. City of Detroit, supra, 597 F.2d at 568.

The petition for removal, accordingly, was properly denied by the district court.

The District court's judgment under review in 85-5032 was also properly entered dismissing plaintiff's suit for beint barred by the state court judgment under the doctrine of res judicata. The court also properly granted the defendants costs and attorney fees. Tennessee courts have held that if a second lawsuit involves the same parties acting in the same capacities and touches the same subject matter as the first lawsuit, then the principles of res judicata apply. National Cordova Corp. v. City of Memphis, 214 Tenn. 371, 380 S.W.2d 793, 798 (1964); Grange Mutual Casualty Co. v. Walker, 652 S.W.2d 908, 909-10 (Tenn. App. 1983). Under Tennessee law, the doctrine of the sale of her property. The district court dismissed the suit for being barred under the doctrine of res judicata. It also granted the defendants costs and attorney fees. The appellant appeals from this judgment in case no. 85-5032. In both of the cases, the appellant now requests the Court to enjoin the sale of her property.

Upon consideration of all the arguments presented by the parties in their respective appellate briefs, this Court Concludes that it must dismiss in part the appellant's appeal filed under 84-6090 for lack of jurisdiction and yet also affirm the district court's judgment to the extent it is reviewable. The district court's judgment under review in 85-5032 shall also be affirmed and the motion for injunctive relief shall be denied in both cases. Because the Court likewise finds the assertion of the arguments presented by the appellant in these cases to be absolutely frivolous, costs and attorney fees will be awarded against the appellant pursuant to Rule 38, Federal Rules of Appellate Procedure.

This Court lacks jurisdiction to entertain the appellant's appeal in case no. 84-6090 to the extent appellant seeks review of the district court's judgment dismissing her petition for removal filed under 28 U.S.C. 1441 or 1442. If a case is determined to have been removed improvidently and without jurisdiction under 28 U.S.C. 1447(c), then pursuant to 28 U.S.C. 1447(d), the order of

dismissal and remand shall not be reviewable in the court of appeals unless the removal was sought in a civil rights case under 28 U.S.C.1443. Gravitt v. Southwestern Bell Telephone Co., 430 U.S 723 (1977); In re Romulus Community Schools, 729 F.2d 431 (6th Cir.1984); Detroit Police Lts. and Sgts. Ass'n v. City of Detroit, 597 F.2d 566, 567 (6th Cir. 1979) (per Curiam). To the extent appellant sought removal under 1441 or 1442, therefore, this appeal must be dismissed because a dismissal of a petition for removal for being untimely is denial within the meaning of 1447(c) and is hence unreviewable under 1447(d). Lewis v. Louisville & Nashville R. Co., 758 F.2d 219, 222 (7th Cir. 1985); Royal v. State Farm will bar consideration of all claims which were or reasonably could have been litigated by the parties in the state court action. American National Bank & Trust Co. v. Clark, 586 S.W.2d 825, 826-27 (Tenn. 1979); National Cordova Corp. v. City of Memphis, supra, 380 S.W. 2d at 798. Accordingly, it is clear that the appellant's federal lawsuit was barred as she sought to relitigate issues which were and

could have been fairly litigated in the previous state court action. The issues and parties are identical in both suits; and, in addition, real estate and probate are peculiarly within the knowledge and expertise of the local state courts. Policy considerations, therefore, likewise support the application of res judicata in this case.

The district court also properly found the plaintiff liable for costs and attorney fees, pursuant to Rule 11, Federal Rules of Civil Procedure. Plaintiff unequivocally knew that a court of competent jurisdiction had already entertained litigation involving the identical subject matter, issues and parties. She had also already sought appellate review in the state courts and she had also tried to present her claims in a federal forum by filing a petition to remove. Under these circumstances, it is reasonable to conclude that this appellant did not have a good faith belief that her suit was well founded, as a prefiling inquiry into her own history of litigation would have shown her otherwise. The district court, therefore, did not abuse its discretion in

assessing costs and attorney fees against this plaintiff. See In re TCI Ltd., 769 F.2d 441, 446 & 447 (7th Cir. 1985); Eastway Construction Corp. v. City of New York, 762 F.2d 243, 253-54 (2d Cir. 1985); Committee Notes to the 1983 Amendment to Rule 11, Federal Rules of Civil Procedure.

Finally, this Court concludes that costs and attorney fees must be assessed against the appellant for bringing these appeals as her argiments are frivolous and completely without merit. Rule 38, Federal Rules of Appellate Procedure Reynolds v. Humko Products, 756 F.2d 469, 473-74 (6th Cir. 1985); TIF Instruments, Inc. v. Colette, 713 F.2d 197, 201 (6th Cir. 1983). The appellant's attempts to distinguish her suit from the state court action and hence avoid the application of res judicata are totally inconsequential. Despite her having counsel represent her in state court, the plaintiff was still sued in the same capacity and character as she now seeks to sue her siblings as an individual and not as a representative of a third party. Also with her having been represented by counsel in the first action, for a while,

policy considerations support rather than detract from the application of res judicata to bar her present suit filed pro se.

For these reasons, this panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34(a), Federal Rules of Appellate Procedure. The appeal under review in 84-6090 is, accordingly, dismissed to the extent the appellant sought review of the denial of her petition to remove a non-civil rights case pursuant to Rule 9(d)(1), Rules of the Sixth Circuit. The district court's judgment under review in that case is, however, affirmed to the extent the appellant sought to remove a civil rights case is, however, affirmed to the extent the appellant sought to remove a civil rights case pursuant to Rule 9(d)(3), Rules of the Sixth Circuit. The appellant's motion for injunctive relief is hereby denied and costs and attorney fees are also hereby awarded against the appellant pursuant to the cited authority and Rule 38, Federal Rules of Appellate Procedure. The appellees may

file with the clerk of this Court, with proof of service, an itemized and verified bill for the costs and attorney fees within fourteen days after the entry of this order. The bill should specify services rendered in only these two appeals and not in appeals docketed under 85-5101 and 85-5147 taken from the district court's order specifying the amount of costs and fees awarded in the district court.

If counsel is unable to separate his services rendered in these four appeals, counsel should divide the total amount of his costs and fees in half and assign one-half to appeals 84-6090 and 85-5032 and the other half to 85-5101 and 85-5147.

ENTEREN BY ORDER OF THE COURT

Signed John P. Hehman
Clerk

ISSUED AS MANDATE: 3/27/86

COST: $850.01

No. 85-5101
No. 85-5147
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LARLENE POLYAK
Plaintiff-Appellant

FILED
DECEMBER 17,1985

v.

FRANK HULEN AND
WILMA LESNANSKY
Defendants-Appellees

ORDER

(Not recomended for full text publication)

BEFORE: KENNEDY and KRUMPANSKY, Circuit Judges: and SUHREINRICH, District Judge*

In these two appeals, a Michigan pro se plaintiff attempts to appeal from a district court order setting an amount of costs and attorney fees awarded to the defendants under Rule 11, Federal Rules of Civil Procedure. The determination that plaintiff should be liable for costs and attorney has alresdy been reviewed by this Court in case no. 85-5032, and that determination is not again before us in these appeals. For the reasons, which follow the Court concludes that the amount of the costs and fees is proper and reasonable under the circumstances of this case.

Initially, it is apparent that this Court lacks jurisdiction over the appeal docketed under

*The Honorable Richard F. Schrheinch, U S District Judge for the Eastern District of Michigan sitting by designation.

case no. 85-5101 because plaintiff's motion of appeal was filedduring the pendency of her timely motion to dismiss the order setting the amount of costs and fees.Since the motion to dismiss challenged the correctness of the order, it is construed as a time controlling motion to alter or amend suthorized Rule 59(e), Federal Rules of Civil Procedure. Miller v. Leavebworth- Jefferson Elec. Co-op.,653 F. 2d 1378, 1380(10th Cir. 1981) Dove v. Codesco, 569 F 2d 807, 809(4th Cir.1978); Theodoropoulos v. Thompson-Starrett Co., 418 F 2d 350, 353(2d Cir. 1969). Since plaintiff's notice pf appeal was filed while the motion was pending in the district court,the notice of appela was rendered a nullity by operation of Rule4(a), Federal Rules of Appellate Procedure,Griggs v. Provident Consumer Discount Co., 459 U.S. 56(1982) (per curiam)

The Court does, however, have jurisdiction in case no. 85-5147 to review the district court's order setting the amount of costs and attorney fees. the district courts marginal entry on the plaintiff's motion to dismiss is an order actually denying the order without prejudice for lack of

jurisdiction. With the denial of the motion, the district court's underlying judgment setting the amount of costs and fees becomes reviewable in this appeal. Cf. Peabody Coal Co. v. Local U. Nos 1734, 1508 & 1548, U.M.W., 484 F.2d 78, 81(6th Cir 1973).

Upon review of the order in light of the arguments raisedby the parties in the district court and their appellate briefs, this Court concludes that the amount awarded is proper and reasonable in this case. Although the district court denied the defendants their costs as generated in this plaintiff's attempt to remove another case to the federal bar, it is apparent that work performed even before filing date of plaintiff's federal suit can be compensable in this case because the work was performed in the anticipation and preparation for the defendant's defense to plaintiff's suit. Certainly defense counsel assumed the risk that plaintiff's suit may not have been filed when he performed the anticipatory legal work; however, after it was filed, there is no reason now why the work should go by the wayside when plaintiff's suit warrents the assessment of costs

and fees against plaintiff in the first place. As to the plaintiff's argument that certain telephone calls and other work were of a personal not legal nature, we note the bitter exchange between plaintiff and counsel for defendants in the district court on this matter, and decide that it was not clearly erroneous for the district court to accept counsel's version of the facts in this case.

For these reasons, this panel unanimously agrees that oral argument is not necessary in these appeals. Rule 34(a). Federal Rules of Appellate Procedure. The plaintiff's motion for injunction is, accordingly denied. The defendant's request for cost and attorney fees in these two appeals under Rule 38, Federal Rules of Appellate Procedure, is expressly denied. The appeal docketed in case no. 85-5101 is hereby dismsissed for lack of jurisdiction pursuant to Rule 9(d)(1), Rules of the Sixth Circuit; and, the district court's order setting the amount of cost's and fees, on review in case no. 85-5147 is hereby affirmed pursuant to Rule 9(d)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
John P. Hehman
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT

	District	Judge
EARLENE POLYAK Plaintiff	Sixth	Wiseman
v. FRANK HULEN AND WILMA LESNANSKY	Com. Filed 10/18/84	Docket no. 1:84-0083

Name	Address	Telephone
EARLENE POLYAK APPELLEE	3179 Middlefield Dr.	Trenton, Mi. (313)676-3364
Defendant ROBERT BOSTON	2100 One Commerce Place,	Nashville, Tenn. 37239 (615)244-6380

Check as many as apply

A. Jurisdiction	Disrtict Court Disposition	Relief
XFederal Question X Diversity	X Final Decision of District Court X No Trial	XDamages Amount sought $60,000.00

NATURE OF SUIT

XCivil Rights	X Real Property

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT

	District	Judge
FRANK HULEN AND WILMA LESNANSKY	Sixth	Wiseman
v.		
EARLENE POLYAK	Com. Filed	Docket No.
Defendant	10/1/84	1:84-0082

Name	Address	Telephone
EARLENE POLYAK	3179 Middlefield, Trenton, Mi.48183	(313)676-3364
Plaintiff		
ROBERT BOSTON	2100 One Commerce Place Nashville, Tenn. 37239	(615)244-6380

Check as many as apply

A. Jurisdiction	District Court Disposition	Relief
X Federal Question	XFinal	X Damages
X Diversity	Decision of District Court	amount sought $60,000.00
	X No Trial	

NATURE OF SUIT

XCivil Rights	X Real Property

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HUIEN ,et al.

v.

EARLENE POLYAK

RECEIVED FOR ENTRY
OCTOBER 26, 1984

No. 1-34-0082

ORDER

In accordance with the accompaning Memorandum, the petitioner's Petition for Removal of Partition for Sale of Property " is denied. The Court hereby dismisses the claim of petitioner Earlene Polyak for failure to state a claim on which relief can be granted. Fed.R. Civ. P. 12(b)(6). Respondents requests for costs and attorney fees denied.

Signed John P. Hehman

THOMAS A. WISEMAN, JR.
CHIEF JUSTICE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

RECEIVED FOR ENTRY
DECEMBER 3, 1984

EARLENE POLYAK

v. NO. 1-84-0083

FRANK HULEN et al.

ORDER

In accordance with the accompaning Memorandum this Court grants the defendant's motion to dismiss the plaintiff's complaint.

Pursuant to Rule 11 of the Federal Rules of Civil Procedure, the Court also grants the defendant's motion for costs, including reasonable attorney fees.

Signed Thomas A. Wiseman Jr.

THOMAS A. WISEMAN JR.
CHIEF JUDGE

... Set out below in the description of services dates of services and time spent by me on behalf of defendants in this matter:

Date	Services	Hours Spent
10/06/84	Conference with W. E. Boston (father) re Doistrict Court representantion and factual background on case and parties	1.50
10/08/84	Preparation of Motion and Memo. in support thereof and research for same; telephone conference with state court counsel(father).	1.70
10/09/84	Telephone call with W,E. Boston (father) and preparation of revisions in Memo. brief.	.20
10/10/84	Preparation of motion and correspondence of conveyance of same(father?) Conference with UNited States District Court Clerk's personnel re status of pending pleadings.	.20
10/19/84	Review of plaintiff's brief and preparation of response thereto defendants; telephone conference with counsel(father).	.50
10/26/84	Preparation of responses thereto on District Court pleadings.	.60
	(Decision on case no 1:84-0082, on October 26, 1984, these charged to 1:84-0083. After denial by Court.	
10/29/84	Preparation of responses to Polyak's subsquent District court pleading. with W.E.Boston(father) re status of pending matters.	.60
10/31/84	Research for res judicata effect of plaintiff's state court lawsuit.	.40
11/01/84	Review of file preparation of motion to dismiss.	.20
11/05/84	Review of status of Polyak pleadings motions telephone conference with counsel(father).	.20
11/08/84	Preparation of memo. brief re response to Plaintiff's complaint in District Court	1.10

11/09/84 Review of Tennessee Court of Appeals and Tennessee Supreme Court files and record at office review and revision of memo. in support of defendant's motion to dismiss plaintiff's District CourtComplaint. 1.90

11/12/84 Preparation of motion and memo on behalf of defendants re Polyak's pleading 1.00

11/13/34 Review of Polyak's latest pleadings preparation of letter to Lawrence County Chancery Court Clerk and Master's office and review of pleadings .10

11/19/84 P reparation of filing of certified copies and obtaining certification of same.Copies (never in record certified: emphasis added multiplication of record). .10

11/21/84 Preparation of supplemental Memorandum to dismiss for res judicata .20

11/25/84 Telephone call W.E. Boston(father) .10

12/05/84 Review of memo;telephone conference with W.E. Boston(father). review 1.20

12/07/84 Preparation of revisions and correction in affidavit ... letter to W.E. Boston re status:telephone call with W.E. Boston(father). .80

total hours spent 12.60

....

Photocopies	$37.80
Long distance charges	$66.96
	$104.76

..... Further affiant not.

Signed Robert Boston

Rober E. Boston

Note: Mr. Edward Boston entered attorney cost and fees in the Court of Appeals without serving and allowing Appellant to object and all efforts to get the mandate recalled to allow objections were disregarded by the Court.

COURT OF APPEALS
STATE OF TENNESSEE
MIDDLE SECTION
NASHVILLE 37219

September 9, 1985

Dear Counsel:

Re: BUFORD EVANS
VS
DARLENE POLYAK

We are returning herewith the copy of the Notice of Appeal forwarded to this office in the above case.

An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk

RELATED CASES

The following opinions were copied from cases related to the above.

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

BUFORD EVANS& SONS

VS CIVIL ACTION NO. 10647

EARLENE POLYAK

Stamped:
1985 Nov 12 A M 9:11

O R D E R

This case came on to be heard and was heard before the Honorable Jim T. Hamilton, on plaintiffs Motion to Forward records of this case from the Circuit Court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED by the Court that Plaintiff's be denied.

This 17th day of November, 1985

Signed Jim T Hamilton

JIM T. HAMILTON
CIRCUIT JUDGE PART 1

Note: The notice of appeal, transcript of proceedings, issues, were properly before the Court when this motion was dismissed, after the revision of Rule 5(a). Appellant was not in this Court as stated in defense of her motion. Judge Hamilton disregarded all of Appellant's motions denied motion to disqualify himself on December 26, 1984, and as a result that she believed he prejudiced jury also, she filed complaint under diversity of citizenship, and joined cases 10647, 10611, 10612 by 1441(c).

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Received for entry
November 13, 1985

CARLENE POLYAK

VS

Civil Action No. 1:85-0116

JIM T. HAMILTON, Individually and in his judicial capacity as Circuit Judge, Jointly and severally, and The CIRCUIT COURT OF LAWRENCE COUNTY

ORDER

For the reasons stated in the Memorandum contemporaneouslyfiled herewith, the application for extraordinary relief is denied and the case is dismissed on the Court's own motion. No process shall issue but a copy of this memorandum will be mailed to defendants.

Plaintiff Polyak is expressly enjoined from filing any further actions in this Court regarding partition sale of property in Lawrence County without express permission of this Court.

Signed Thomas A. Wiseman

THOMAS A. WISEMAN JR.
CHIEF JUDGE

Note: The above case was entered and dismissed within five days of filing including a week end and summons were not issued, without any oral argument or hearing of any kind.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

BUFORD EVANS& SONS

V. Civil Action No. 1:85-0120

EARLENE POLYAK

Entered
NOV 26, 1985

ORDER

Before the court is the "pro se Petition for removal of Suit for peroperty survey," filed by Earlene Polyak. This the fifth suit under different headings but all dealing with Mrs. Polyak's disatisfaction with a state court action in Lawrence County in a partition suit. Here she seeks to remove a suit brought by a surveyor to colleot his fees. The Court has dismissed prior actions, and has enjoined Mrs. Polyak from attempting to religtigate this matter in this Court, and from filing any further suits arising out of the partition suit.

This case is another mistaken effort on Mrs. Polyak's part. Because it was lodged before the Court issued its injunction, it is not subject thereto.

This case is not removable for several reasons

1. 28 USC 1446(b) requires a petition for removal to be filed within 30 days after receipt by the defendant of the initial pleading set forth the claim for relief upon which processing is based. Suit was filed in Lawrence County General sessions Court, and Mrs. Polyak encloses a letter to her dated August 20, 1984 from the Secretary of the State notifying her of the suit with an appearance date of September 10, 1984. Other pleadings indicate she received such initial pleadings for removal filed November 12, 1985 and is, therefore untimely by over a year.

2. The suit for a debt allegedly due Evans in the amount of $475.00Jurisdiction of this court on removal petition is governed by 28 USC 1441(a) cases in which this court would have had original jurisdiction. Although Mr.Evans' suit against Mrs. Polyak is between citizen's of different states the amount in controversy is the amount Mr. Evans sued for, $475.00 not the amount Mrs. Polyak

claims to have lost by adverse judgment of the court in the partition suit. A counter-claim cannot supply the necessary prerequisite of $10,000 amount in controversy.28 USC 1332.

3. The petition must be verified. 28 USC 1446(a) It is not.

4. The petition must contain a copy of the process and pleadings served upon her 28USC 1446(a) It does not.

5. The petition must be accompanied by a bond with "good and sufficient surety". There is no surety on Mrs. POlyak's bond.

This Petition id dismissed and the case is remanded to the Circuit Court of Lawrence county.

Mrs. Polyak is cautioned to seek legal advice before filing any further frivilous suits.

Signed Thomas A Wiseman Jr
THOMAS A WISEMAN JR
CHIEF JUDGE

The above case was joined to Jim Hamilton 1:85-C116, which was filed with divdrsity of citizenship and jurisdictional amount per 1441(c). itwas dismissed within 15 days without oral argument or any kind of hearing. This case is joined on back of civil cover sheet.filed on November 11, 1985, as follows:

> The above case is being petitioned for for removal from the Circuit Court of Lawrence Co. Tennessee, in conjunction with Complaint against Jim T. Hamilton,,Individually and in his judicial capacity, Jointly and Severally, and the Circuit Court of Lawrence County, Tennessee, which was submitted to this Court on November 7, 1985.
>
> Appellant alleges that her Civil and Constitutional rights as provided by the Fifth and Fourteenth Amendments have been violated as a result of denial of right of appeal as stated in the Tennessee State laws,

and Federal Law of the United States.

CAUSE OF ACTION

Appellant believes that the denial of right of Civil and Constitutional right to appeal is depriviation of Civil and Constitutional Rights guaranteed by the Fifth and Fourteenth Amendments.

Appellant found that this case could be appealed despite remand under 1443(1) and 1443(2). She is of the opinion that fraud involved in this case would allow for waive of the time, pursuant to 60.02 Federal Rules of civil Procedure. Case Nos. 10611 and 10612, and 10647 wer all joined to 1:85-C116.

There is a transcript of proceedings in which Appellant asked Judge Hamilton to disqualify himself after she becane convinced that he was too prejudiced against her by local influence. He denied motion and proceeded to trial when she was very ill, after her husband brought her in back seat of car from Florida.

Appellant appealed case to Court of Appeals, but dismissed after conservation between lawyer and Case Supervisor. Appellant has appealed to the Supreme Court of the United States, but appeal has not been filed to her knowledge.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK) JURY TRIAL
) CIVIL ACTION NO.__
VS) 3-85X-108

WILLIAM BOSTON
BOSTON BATES & HOLT ENTERED NOV20, 1988

PETITION TO REMOVE AND
SCHEDULE JURY TRIAL

To the Honorable Judges of the United States Court of the Middle District of Tennessee: Petitioner Earlene Polyak, respectfully shows this Court:

1. Plaintiff is requesting removal of the above entitled civil action to this Court on the grounds that she has been denied by State Court proceedings her rights secured and guaranteed to by the laws providing for equal civil rights of the citizens of the United States by the Fifth and Fourteenth Amdnendment to the Constitution. This deprivation concerns her property which is an irreparable damage and a loss of a right to never be regained. Such denial continues to occur in that plaintiff has been denied due process and equal treatment and the constitutional right to a fair trial.

This deprivation is further evidenced in an amendment of Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 14, 1984, deleting the requirement tjat a copy of the notice of appeal be filed with the clerk of the Appellate Court. Plaintiff believes this law discriminates against the layman in that it allows the Court Clerk or Judge to determine who can appeal, by choosing which case will be heard.....

FILING OF THIS PETITION IS DENIED, SEE ORDER OF THIS COURT & REFUSED IN CASE NO. 1-85-0166(M.D. Ten.)

Signed Judge Wiseman

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

V.

THOMAS STACK

NO. 1 85 0125
ENTRY
DEC 3 1985

ORDER

Although improperly styled a Petition for Removal this case appears to be an action for attorney negligence. diversity exists, and jurisdicrional amount is alleged. This pleading has been indulged with every presumption because of plaintiff's pro se status. Although it contains many of the same allegations and requests for relief made in plaintiff's numerous other frivilous filings in this Court, this petition presents allegations of attorney negligence or malfeasance which it to survive the initial review. It if filed within one year after the order of nonsuit was entered by Judge Hamilton of the similar suit in Lawrence County.

The injunction heretofore issued prohibiting Mrs. Polyak from filling further suits is modified to permit the filling of this petition. The clerk will file and issue process.

Signed Thomas A Wiseman

THOMAS A WISEMAN JR.
CHIEF JUDGE